

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 8.54.422,) ON PROPOSED AMENDMENT,
8.54.423, 8.54.702, 8.54.703,) ADOPTION AND REPEAL
8.54.901, 8.54.902, 8.54.903,)
8.54.904, 8.54.905 and)
8.54.906 regarding examinations) and professional quality)
monitoring; the proposed)
adoption of NEW RULE I; and the) proposed repeal of ARM 8.54.706)
related to composition of the)
screening panel)

TO: All Concerned Persons

1. On October 15, 2004, at 10:00 a.m., a public hearing will be held in room 489, Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Accountants no later than 5:00 p.m., on October 8, 2004, to advise us of the nature of the accommodation that you need. Please contact Susanne Criswell, Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2389; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdpac@state.mt.us.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

8.54.422 EXAMINATIONS (1) through (6) remain the same.

(7) Eligible applicants shall make the necessary contacts to schedule the time and place for examination at an approved test site and pay all applicable fees. Once the candidate obtains a notice to schedule from the board or the board's contractor, the applicant has six months to sit for ~~at least one test section~~ the scheduled test section(s). If the time expires without sitting for ~~at least one the test section~~ section(s) applied for, the applicant will need to reapply.

(8) remains the same.

AUTH: 37-50-204, 37-50-308, MCA

IMP: 37-50-204, 37-50-302, 37-50-303, 37-50-308, MCA

REASON: There is reasonable necessity to amend ARM 8.54.422 in

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order to make the rule consistent with the scheduling protocols established for the computer-based examination.

8.54.423 EXAMINATION CREDITS - OUT-OF-STATE CANDIDATES

(1) The board will recognize credits for any part of the computer-based uniform certified public accountant examination passed in other jurisdictions, provided those credits meet the requirements of 37-50-204, MCA, and the applicable rules of the board, and were earned under circumstances comparable to those in Montana.

(2) The board will recognize credits for any part of the pencil-and-paper version of the uniform certified public accountant examination passed in other jurisdictions, provided those credits:

(a) meet the requirements of 37-50-204, MCA;

(b) were earned under circumstances comparable to those in Montana; and

(c) timely qualify for conditional credit pursuant to ARM 8.54.425.

AUTH: 37-50-204, 37-50-308, MCA

IMP: 37-50-204, 37-50-302, 37-50-303, 37-50-308, 37-50-309, MCA

REASON: There is reasonable necessity to amend ARM 8.54.423 to clarify that conditional credits earned prior to the implementation of the computer-based uniform certified public accountant examination will be recognized in Montana although obtained in another state. The Board's staff recently noted that there was a potential ambiguity because the situation was not expressly provided for in the Board's rules.

8.54.702 ENFORCEMENT AGAINST LICENSEES (1) through (1)(b) remain the same.

(c) performance of any fraudulent act ~~in the practice of the profession~~ while holding a certificate, license or permit issued under Title 37, chapter 50, MCA;

(d) and (e) remain the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-50-203, MCA

IMP: 37-1-136, 37-1-316, 37-1-319, MCA

REASON: There is reasonable necessity to amend ARM 8.54.702 to clarify that fraudulent acts committed by a public accountant may result in disciplinary action even if the fraudulent acts were not directly related to public accounting work. The need for the clarification has recently come to the Board's attention.

8.54.703 ENFORCEMENT PROCEDURES - INVESTIGATIONS

(1) The board may designate any person not a board member to serve as ~~positive~~ the enforcement coordinator to conduct or coordinate an investigation. During the investigative process, the report of the ~~positive~~ enforcement coordinator or designated

investigator, the testimony and documents gathered in the investigation and the pendency of the investigation shall be treated as confidential information by the board and its designees, and shall not be disclosed except to the extent deemed necessary in order to conduct the investigation or in compliance with 37-1-135, MCA, for the public's right to know provided by Article II, section 9 of the Montana Constitution.

(2) remains the same.

AUTH: 37-1-136, 37-1-319, 37-50-203, MCA

IMP: 37-1-136, 37-1-316, 37-1-319, MCA

REASON: There is reasonable necessity to amend ARM 8.54.703 to specify that an investigator other than the enforcement coordinator may be used. The Board has recently been presented with a matter where the use of another individual for investigative purposes would have been expedient and also resulted in lower costs being incurred by the Board. There is also reasonable necessity to amend the rule to conform with the current terminology used by the Board in its quality assurance and enforcement functions.

8.54.901 INTRODUCTION (1) Pursuant to 37-50-203, MCA, the purpose of ~~these rules shall be~~ this subchapter is to provide for the monitoring of the ~~profession of public accounting~~ profession's association with financial statements.

AUTH: 37-50-203, MCA

IMP: 37-50-203, MCA

REASON: There is reasonable necessity to amend ARM 8.54.901 to clarify the nexus between the issuance of financial statements and the monitoring rules, at the same time other monitoring rules are being amended or otherwise clarified. In addition, there is reasonable necessity to amend the rule to more precisely identify which rules are being introduced. The proposed amendments are a result of the periodic rule review conducted by the Board.

8.54.902 DEFINITIONS As used in this ~~section~~ subchapter:

(1) and (2) remain the same.

~~(3) "Quality review" means a review under a formal quality review program sponsored by the American institute of certified public accountants or such other formal quality review program approved by the board.~~

AUTH: 37-50-203, MCA

IMP: 37-50-203, MCA

REASON: There is reasonable necessity to amend ARM 8.54.902 to remove a definition that is no longer being used in the rules at the same time as the use of the term is being proposed for elimination from related rules.

8.54.903 STATEMENT BY PERMIT HOLDERS (1) Every individual applying for a permit to practice or renewal thereof must submit a statement to the board which describes ~~his/her the individual's~~ level of association with ~~public accounting reports that indicates expert knowledge of accounting or auditing financial statements.~~ This statement shall disclose the practice unit, if any, of which the permit holder is a member. This statement shall be used to determine if the permit holder is required to comply with ARM 8.54.904.

(2) through (4) remain the same.

AUTH: 37-50-203, MCA

IMP: 37-50-203, MCA

REASON: There is reasonable necessity to amend ARM 8.54.903 to clarify the nexus between the issuance of financial statements and the monitoring rules, at the same time other monitoring rules are being amended or clarified. The proposed amendments are a result of the periodic rule review conducted by the Board.

8.54.904 FILING OF REPORTS (1) and (2) remain the same.

(3) The report submitted must have been issued within the period of time specified by the board ~~and must have the client's or employer's name and similar identifying information deleted.~~ For reports submitted pursuant to (1)(c), the client's or employer's name and similar identifying information must be redacted.

(4) remains the same.

AUTH: 37-50-203, MCA

IMP: 37-50-203, MCA

REASON: There is reasonable necessity to amend ARM 8.54.904 to clarify that compilation reports are to be "sanitized" to protect the identity of the individual or entity whose reports are being reviewed. Because of the need for review of the work papers associated with audit reports and review reports, found in (1)(a) and (1)(b), respectively, eliminating identifying information is neither feasible nor efficient. The proposed amendments are a result of the periodic rule review conducted by the Board.

8.54.905 ALTERNATIVES AND EXEMPTIONS (1) A practice unit which has undergone an AICPA or board-sanctioned peer ~~or quality~~ review within three calendar years must file a copy of its peer ~~or quality~~ review report, including letter of comments (if any), letter of responses (if any) and acceptance of the review report by the administering entity.

(2) The board reserves the authority to request a practice unit to submit a copy of any or all reports, financial statements and supporting ~~workpapers~~ work papers for engagements ~~by a subject to peer or quality review report.~~

(3) remains the same.

AUTH: 37-50-203, MCA
IMP: 37-50-203, MCA

REASON: There is reasonable necessity to amend ARM 8.54.905 to conform the language used with respect to professional reviews, at the same time other monitoring rules are being amended or otherwise clarified. The proposed amendments are a result of the periodic rule review conducted by the Board.

8.54.906 REVIEWS AND ENFORCEMENT (1) remains the same.

(2) Responses are required from those practice units whose reports are classified as not acceptable or from practice units that have submitted a peer ~~or review~~ report that is other than ~~unqualified~~ unmodified. The board may also require a written comprehensive statement of future procedures to be followed that will ~~insure~~ ensure an improvement in the quality of future reports.

(3) For those practice units which are required to submit responses under (2) ~~above~~, the board may require one or more of the following actions:

(a) through (e) remain the same.

(f) participation in an approved peer ~~or quality~~ review program; and

(g) through (4) remain the same.

AUTH: 37-1-319, 37-50-203, MCA
IMP: 37-1-312, 37-50-203, MCA

REASON: There is reasonable necessity to amend ARM 8.54.906 to conform the terminology used in the rule with language used in related rules, at the same time other monitoring rules are being amended or otherwise clarified. The proposed amendments are a result of the periodic rule review conducted by the Board.

4. The proposed new rule provides as follows:

NEW RULE I ACCEPTANCE OF EXAMINATION CREDITS (1) In order for credits for passing the uniform certified public accountant's examination to be recognized by the board, a candidate who has never held a certificate as a certified public accountant, or a license as a licensed public accountant in any state must have earned those credits under circumstances and conditions identical to the circumstances and conditions applicable to Montana candidates at the time those credits were earned. Those circumstances and conditions include the conditioning requirements for accumulation of examination credits, if the applicant did not pass all required parts of the examination on the first attempt.

AUTH: 37-1-131, 37-50-203, MCA
IMP: 37-50-302, 37-50-303, 37-50-309, MCA

REASON: There is reasonable necessity to adopt NEW RULE I in order to identify the circumstances under which the Board will

accept examination credits earned in other states. In the process of adopting rules concerning the transition from the former "paper-and-pencil" version of the Uniform CPA examination to the current computer-based examination, the Board repealed ARM 8.54.405 and 8.54.407 which addressed how the Board accepted examination credits earned in other jurisdictions. Although the Board adopted rules for acceptance of computer-based credits, and paper-and-pencil credits earned in conjunction with computer-based credits, the Board overlooked providing for acceptance of credits where the credits had been earned entirely under the paper-and-pencil version of the exam. The Board has recently received applications from individuals who had previously passed the Uniform CPA exam, but for one reason or another had not yet applied for a certificate or license.

5. The rule proposed to be repealed is as follows:

8.54.706 SCREENING PANEL found at ARM page 8-1504.

AUTH: 37-50-203, MCA

IMP: 37-1-307, MCA

REASON: There is reasonable necessity to repeal ARM 8.54.706 in light of recent Board discussions concerning the relationship of the screening panel membership and the adjudication panel membership. The Board has concluded that the rule's provisions do not allow the Board to appropriately exercise its discretion with regards to which member sits on which panel. The proposed repeal is a result of the periodic rule review conducted by the Board.

6. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdpac@state.mt.us and must be received no later than 5:00 p.m., October 22, 2004.

7. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://discoveringmontana.com/dli/pac> under the Board of Public Accountants rule notice section. The Department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late

submission of comments.

8. The Board of Public Accountants maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Public Accountants administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdpac@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

9. The Board of Public Accountants will, during its regular meeting on November 8 and 9, 2004, at the Board's offices, 301 South Park Avenue, Helena, consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendments, adoption and repeal. Members of the public are welcome to listen to the Board's deliberations.

10. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

11. Mark Cadwallader, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PUBLIC ACCOUNTANTS
GARY KASPER, LPA, CHAIR

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

Certified to the Secretary of State September 13, 2004